of the general community or to help those who are otherwise lacking in land. In such a case the original owner has no right to prevent others from making use of the land and the user acquires the right.

This was made clear by the Rajah's order dated 10th August, 1899 Land Tenure Act, which states that, 'Any Dayak removing from a river or district may not claim, sell or transfer any farming ground in such river or district nor may he prevent others farming thereon unless he holds such land under grant'."

There is therefore no doubt whatsoever upon the facts that neither the appellant nor the respondent has any claim to the land held under customary rights.

On the view we take there really was no evidence at all either in the lower courts or in this court capable of supporting the respondent's claim.

We have come to the conclusion that the issue presented to this court is straightforward. We can find no reason for upsetting the Resident Native Court's decision. Indeed so far as the authorities go, the court came to a right decision in point of law. In the result we think the finding of that court was right.

It is the unanimous opinion of the court that this appeal must be dismissed and the court orders that it be dismissed accordingly.

William Hardin and **Anyau anak Bakit**, Assessors, concurred.

Appeal dismissed.

LIM HENG SOON & ANOR. v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tan F.J. & Chua J.) November 14, 1969]

[Singapore — Federal Court Criminal Appeal No. Y.14 of 1968]

Penal Code, s. 302 read with s. 34 — Weapon of offence not marked as exhibit — Weapon handed to jury after they had retired to find their verdict — Misdirection.

Criminal Law and Procedure — Weapon of offence — Introduction in evidence — Not marked as exhibit — Whether introduction of fresh evidence — Whether irregularity resulting in miscarriage of justice.

The appellants were convicted on a joint charge of the murder of a detective in the Singapore Police Force on the night of February 5, 1968. They appealed to the Federal Court and it was contended on appeal that the convictions should be set aside because the bearing scraper which was alleged to have been used as the weapon of offence was not marked as an exhibit though it was handed to the jury after they had retired to find their verdict. Further there was no proper direction on common intention and the judge misdirected the jury on this.

Held, dismissing the appeal: (1) the handing over to the jury after they had retired of the bearing scraper which was introduced in evidence (but not marked as an exhibit) at the trial did not amount to the introduction of fresh evidence at the trial after jury had retired to consider their verdict;

(2) the trial judge directed the jury on common intention in accordance with the law laid down by the Privy Council in *Mahbub Shah* v. *King-Emperor*(4) and accordingly it cannot be said that he failed to direct the jury adequately.

Cases referred to:-

(1) *Yeo Ah Seng* v. *Public Prosecutor* [1967] 1 M.L.J. 231.

(2) *R.* v. *Stoddart* (1909), 2 Cr. App. R. 217 at p. 246.

(3) *Abrath* v. *North Eastern Railway* (1883), 11 Q.B.D. 400 at p. 453.

(4) *Mahbub* v. *King-Emperor* L.R. 72 I.A. 148.

FEDERAL COURT.

David Marshall for the 1st appellant.

Syed Esa Almenoar for the 2nd appellant.

K. S. Rajah (Ag. Senior State Counsel) (*Isaac Paul Retnam*, Deputy Public Prosecutor, with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal by the appellants against their convictions on a joint charge of murder. They were charged as follows: —

"That you, Lim Heng Soon @ Ah Soon and Low Ngah Ngah @ Low May Koon @ Ngah Ngah on or about the 5th day of February, 1968, at about 11.20 p.m. at Bukit Timah Road, 6th milestone, Singapore, together with one other person unknown, in furtherance of the common intention of all of you committed murder by causing the death of one Munusamy s/o Doresamy, and thereby committed an offence punishable under section 302 read with section 34 of the said Code (Chapter 119)".

The deceased Munusamy was a detective in the Singapore Police Force. On the night of 5th February 1968 he was seen by a friend, Kuppusamy, arresting an unknown male Chinese at a lane off Annamalai Avenue and then leading his captive along Annamalai Avenue towards Bukit Timah Road. The deceased was next seen by another friend, Krishnan, talking with a male Chinese beside a public telephone booth near the junction of Annamalai Avenue and Bukit Timah Road. Krishnan was at the rooftop of a foodstall which was a few feet away from the telephone booth and was repairing the roof. Krishnan overheard the male Chinese asking the deceased to let him go as he had done nothing. Krishnan moved to a position on the roof nearer the telephone booth and squatted facing away from Bukit Timah Road and in the direction of a five-foot way which runs off Annamalai Avenue and parallel to Bukit Timah Road.

While in that position he saw three other male Chinese walking together along the five-foot way from the direction of Annamalai Avenue. They rushed across a foot-bridge towards where the deceased was standing with his captive and one of them knocked against the deceased enabling the captive to run away. The three Chinese then took positions, one behind the deceased, one on his right and one on his left and the deceased was held by two of them. He was then stabbed by the two who were beside him and fell down with the upper portion of his person lying on some aerated water cases. In that half-reclining position he managed to fire some shots from a revolver at one of the Chinese who was bending down in a manner as if to stab him again. Krishnan heard the sound of gunfire and saw green and red flame on the chest of the Chinese who was bending over the deceased.

Krishnan while witnessing this assault jumped down from the roof and ran to a bus shelter near by

and while he was there he saw three persons walking abreast in the direction of Annamalai Avenue. He saw one of them, who was the centre one of the three, fall or appearing to fall and then being assisted along by the other two. He then went towards where the deceased was assaulted and found him lying on the ground with stab wounds. He subsequently accompanied the deceased in an ambulance which took the deceased to the Thomson Road Hospital. While he was outside the hospital, where he had been told to wait, he saw a green car and in it were three persons, two male and a female. He then saw a trolley or wheel chair being brought from the hospital on which one of the two males was put. This male person, who had on a sleeveless singlet at the time, he recognised as the "person who stabbed the first stab" and whose chest he saw aflame when he heard the sound of gunfire.

At an identification parade Krishnan identified the second appellant as one of the three male Chinese who took part in the stabbing of the deceased on 5th February 1968. The first appellant was examined by a doctor of the Thomson Road Hospital at about 12.45 a.m. on 6th February and found to have two bullet wounds one about three inches from the mid-line between the third and fourth ribs (hereinafter referred to as "the lower wound"), the other about six inches from the mid-line between the tenth and eleventh ribs (hereinafter referred to as "the higher wound") on the left side of the front of the chest. X-rays were taken and the doctor then operated on the first appellant at about 3 a.m. the same evening and extracted two bullets, one from the left side of the 10th intercostal space and the other which was found embedded in the muscle in the abdominal wall. The doctor also found that the 10th and 11th ribs were fractured and the fractures were comminuted fractures.

An autopsy was performed on the deceased detective and the pathologist gave evidence that he found six triradiate incised and clear cut stab wounds all in the area of the chest and a small degloving abrasion over the palmar surface of the right thumb adjacent to the inter-phalangeal joint and that he certified the cause of death as shock and haemorrhage from multiple stab wounds. The six stab wounds apart from one of 1 cm. deep ranged from a depth of 7 cm. to 13 cm.

The pathologist stated it was likely that each of those stab wounds was caused by "a sharp-pointed weapon with three edges, three sharp edges, such as a bearing scraper". When he was giving evidence at the trial, the Deputy Public Prosecutor produced for him to see an instrument and the following questions and answers appeared in the transcript: —

"Q. Now you have described the weapon that could have caused this one as a bearing scraper, something with sharp edges and with a point — would it be consistent with a weapon of this kind here?

A. Yes.

His Lordship: What is that?

Q. That would be a bearing scraper, doctor — you have it in mind? (D.P.P. produces a bearing scraper).

A. Yes.

Q. The kind of weapon —

A. The kind of weapon that was used.

Mr. Khoo: My Lord, it cannot be produced by any means. This is downright prejudicial.

His Lordship: He is just showing what a bearing scraper is.

D.P.P.: Yes, this is to let them understand."

Another witness, Neo Yew, a bus conductor who owned a green Morris Oxford car was woken up by his wife at about 11.30 p.m. on 5th February 1968 and as a result of what his wife told him he got up, opened the door of his house and saw three persons outside, one of whom was injured. He knew the injured person as Ah Soon (the first appellant) and one of the other two as Ngah Ngah (the second appellant) and the third as Sim Tua Poon. He was asked to take the injured person in his car to "the dispensary". He went into his house to change and on going out he saw the second appellant assisting the first appellant to get into the rear seat and saw blood on his chest. He then took them in his car and while driving he asked what the matter was and the second appellant replied that there had been a fight "outside Bukit Timah" with a detective who had opened fire and hit the first appellant. The first appellant also said he had a fight with a detective who opened fire and hit him. On hearing this, Neo Yew became frightened and instead of taking them to the hospital, which he had intended to, drove them to a place called "Ya Kar", switched off the engine and told them he did not want to take them to hospital as he was frightened.

At that time and at "Ya Kar" a woman whom Neo Yew described as "Ah Soon's friend, appeared to me like his fiancee", came along and subsequently Neo Yew, with the first appellant and the girl friend sitting in the rear seat, drove to the Thomson Road Hospital. During the journey to the hospital he heard the first appellant telling the girl friend that if she was asked she was to say that they had been to see a Hokkien opera in the kampong and after the opera as they were hungry they went to have food at a stall in Bukit Timah Road and on arriving there some people were fighting and a detective opened fire and hit the first appellant. On arriving at the Thomson Road Hospital the first appellant was taken by a hospital attendant into the hospital in a wheel chair.

On 2nd April 1968 Neo Yew was shown a male Chinese at the C.I.D. and he identified him as Ngah Ngah, the person who had helped Ah Soon into the car on the night of 5th February 1968. He also identified the first and second appellants at the trial as Ah Soon and Ngah Ngah respectively both of whom were known to him before 5th February 1968.

At 11.15 a.m. the next day a postman found a gun in the pillar post-box at the junction of Holland Road and Pierce Road which he took and handed over to a police officer at the Holland Road Police Station. The collection times for that particular post-box were 11.15 a.m. and 4.30 p.m. daily. The gun was a .38 revolver bearing a Singapore Police Force registration number 294 as well as the manufacturer's number and was the gun issued to the deceased.

A witness Ang Su Hoo who lived in a kampong at Jalan Tua also known as "Ya Kar", having gone to bed after 11 p.m. on the night of 5th February 1968

was awakened by a commotion in the kampong. He went out and saw a car with Neo Yew in the driver's seat and two men and a girl in the rear seat. The two men were Ah Soon (the first appellant) and Ngah Ngah (the second appellant) both of whom were known to him and Ah Soon was lying down. The second appellant came out of the car, approached him and showed him a revolver and told him it belonged to a detective. The second appellant then broke open the revolver, told him there were five rounds of ammunition in it, and then kept the revolver in his own right trouser pocket saying that the detective had used the revolver to shoot the first appellant. The second appellant then asked Ang Su Hoo to take him on Ang's motor-cycle to a place called Ban Guan Estate and this Ang did. On arrival there, the second appellant told Ang he wanted to drop the revolver into a post-box. Ang identified the first appellant and the second appellant to the police as the two males he saw with the girl in the rear seat of Neo Yew's car.

Both appellants elected to make statements from the dock and as a result their evidence could not be subjected to cross-examination. The first appellant denied stabbing the deceased and explained that he had received the two bullet wounds found in his chest in the following circumstances. On the night of 5th February 1968 he had been to see a *wayang* show with his fiancee. After the show he cycled away alone and at the junction of Sixth Avenue and Bukit Timah Road he turned into a five-foot way and arrived at a spot in front of a shop directly opposite the public telephone booth near the junction of Annamalai Avenue and Bukit Timah Road. He saw a few persons engaged in a fight in front of the telephone booth. He parked his bicycle and crossed the foot-bridge towards the telephone booth to find out what the matter was. After crossing the foot-bridge he saw five persons engaged in the fight which was taking place near the telephone booth and one of the contestants was an Indian. This Indian was facing him and on the Indian's left was a Chinese whom he recognised as Sim Tua Poon who lived near his place of work. Sim was twisting the Indian's left arm. On the Indian's right was a male Chinese, the second appellant, who was holding on to the Indian's right arm with both his hands. Suddenly he heard gun reports in rapid succession and as soon as he heard the first shot he realised he was shot. He immediately held his hands against the upper part of his abdomen and after that heard two other gun reports and fell down feeling very giddy and his chest was hurting. Shortly thereafter, he felt he was being assisted and managed to walk a short distance with the assistance of a person, when another person joined to assist him. After walking a short distance, he was put in the back seat of a car and the next thing he knew was that he was in hospital.

The second appellant denied stabbing the deceased but admitted he was present at the scene. He said he was taking his usual way home after he had got off a taxi at the 6th milestone Bukit Timah Road. He saw an Indian assaulting a Chinese and on seeing that the person assaulted was someone who lived in the same kampong, he asked the Indian to stop the assault but was told to mind his own business. He intervened when the Indian continued to assault his acquaintance and was fisted in the face. He became angry and fought with the Indian and after a while three male Chinese rushed up, one of whom was known to him as Sim Tua Poon who stood by the left side of the Indian. The Indian stepped back and drew out a revolver from his right trouser pocket. The second appellant grabbed hold of the Indian's hand to try and wrench away the revolver and at this stage, it went off three times in rapid succession. Then he heard the Indian groan and saw Sim Tua Poon stab the Indian on the left side of the body. He then successfully wrenched the revolver from the Indian's hand. One of the other two Chinese then stabbed the Indian who ran off with the three assailants chasing him.

The second appellant left the scene with the Indian's revolver and saw the first appellant lying speechless near the foot-bridge. He helped the first appellant up and as he was walking him along the five-foot way Sim Tua Poon ran up to them asked what was the matter with the first appellant and then also assisted the first appellant. Later they hailed a passing motorist and Sim Tua Poon asked the motorist to take the injured first appellant to the hospital but he said he was not free. Eventually the motorist took them to Neo Yew's house and from there they left in Neo Yew's car without Sim Tua Poon who had refused to accompany them. During the car journey Neo Yew learnt that there was a fight in which the first appellant was shot by someone and he then drove his car back to "Ya Kar". On alighting from Neo Yew's car at "Ya Kar", the second appellant met Ang Su Hoo and after telling Ang that the first appellant had been shot by a detective, and showing Ang the detective's revolver, went with Ang on Ang's motor-cycle to Ban Guan Estate. He then put the revolver in the post-box at the junction of Holland Road and Pierce Road and returned to his house in Jurong.

No witnesses were called by the second appellant but the first appellant called one witness, Mr. Choo Jim Eng, a consultant surgeon and the head of the Surgical Unit of the Thomson Road Hospital. Mr. Choo had on 4th March 1968 seen the first appellant for about 2 to 3 minutes when the first appellant came before him for a check-up prior to being discharged from the hospital. The next time he saw the first appellant was on the morning he gave evidence at the trial on 25th November 1968. On this occasion he examined the first appellant for 10 to 15 minutes having previously read the case notes or medical report and seen the X-rays of the first appellant's chest which were taken when he was patient at the Thomson Road Hospital. Mr. Choo asked the first appellant on 25th November 1968 what he did when he felt the first shot and in answer the first appellant bent forwards from the waist down. Because of this demonstration by the first appellant, his reading of the medical case note, his examination of the X-rays of the first appellant's chest and considering the entry wounds and final lodgment of the two bullets, Mr. Choo said that it was highly probable that the first bullet hit the body at the lower entry wound, fractured the 10th and 11th ribs and

finally lodged in the skin at the back of the body. Postulating (to use his own expression) that the lower entry wound was the first wound, that the parties were 8 to 10 feet apart, that the person firing was standing up and that the person had bent down on being shot, Mr. Choo said the second bullet caused the upper entry wound and travelled horizontally along the subcutaneous fat and muscles of the abdominal wall without penetrating the chest cavity or the abdominal cavity and lodged just in front of the right flank about one inch below the tip of the 11th rib.

Mr. Patel, a prosecution witness, the surgeon who operated on the first appellant and recovered the two bullets lodged in his body was not able to say which bullet wound, the upper or the lower entry wound, was inflicted first. He found one bullet on the left side behind the back about 4 inches from the mid-line and another bullet embedded in the muscles of the abdominal wall on the right side. He also found the 10th and 11th ribs were fractured, both fractures being comminuted fractures. He said it was unlikely that both fractures could have been caused by one bullet and that the bullet that made the lower entry wound traversed the chest wall fractured a rib and after spending its force lodged in the chest wall and that the bullet which caused the upper entry wound lodged on the left side behind the back and was the one which he felt during his clinical examination of the patient. Mr. Choo, on the other hand, said that the bullet that caused the lower entry wound fractured both the 10th and 11th ribs and finally lodged in the skin at the back of the patient and disagreed with Mr. Patel that one bullet could not have caused the comminuted fractures of both the 10th and 11th ribs.

Shortly after the jury retired to consider their verdict a member of the jury made a request to an officer of the court to whose charge the jury had been committed and as a consequence of that request the officer of the court obtained from the investigating police officer and handed over to the jury the bearing scraper which had been shown to the pathologist and which the pathologist had stated in evidence was the kind of weapon he meant when he said that the stab wounds found on the deceased were caused by "a sharp-pointed weapon with three edges, three sharp edges, such as a bearing scraper".

It is submitted on behalf of the appellants that this amounted to the introduction in the trial of further evidence after the jury had retired to consider their verdict, as the bearing scraper, though produced at the trial, was not made an exhibit. It is in our opinion clear that there was no introduction of fresh evidence and therefore no departure from the strict rule of procedure that no further evidence shall be introduced in a trial after the jury have retired to consider their verdict. The bearing scraper which the jury wanted with them when considering their verdict was already part of the evidence introduced during the trial. It was not introduced in evidence at the trial as the weapon that could have caused the injuries on the deceased. It was introduced, as is apparent from the transcript we have earlier set out, to enable the jury to understand the pathologist's description of the sort of weapon he said could have caused those wounds, namely "a sharp-pointed weapon with three edges, three sharp edges".

The irregularity would seem to be the omission on the part of the trial court to take into its custody and to have marked as an exhibit produced before it the bearing scraper in question but in our opinion no substantial miscarriage of justice occurred as a result of this irregularity.

The other points raised on behalf of the first appellant relate to the summing up of the trial judge to the jury. One such point is that it was a mis-direction to direct the jury that "a reasonable doubt means a substantial well-founded concrete doubt such as would influence your decisions in the course of your everyday ordinary affairs". This point is in our opinion without substance as the learned trial judge continued as follows: —

> "This does not include a fanciful doubt. In other words, members of the Jury, you must consider the evidence as a whole and see that it satisfies you so that you feel sure that the accused committed the offence before you can find him guilty. You must not find him guilty unless you are sure, upon the evidence that has been placed before you in this court, that the crime has been committed and it was accused in the dock who committed that crime and you must be satisfied beyond a reasonable doubt as to his guilt".

Another criticism of the summing up is that it was a mis-direction to direct the jury that "there is a presumption that every person intends the natural and probable consequences of his actions". While we agree with the observations of this court in the Malaysian case of *Yeo Ah Seng* v. *Public Prosecutor*[1] that judges "should avoid using this maxim in their summings-up to the jury when dealing with the question of intention in murder trials" we are of the opinion that the learned trial judge in referring to this common law presumption did not mis-direct the jury in the context in which the words complained of appeared in the summing up. The relevant passage runs thus: —

> "Now, members of the jury, I referred you to the crime of murder, to the offence of murder, that there were three intentions. It is seldom that the intention of an accused person is expressed in words. An accused person is not likely to tell anyone in the hearing of witnesses what he is going to do. It has to be inferred from his conduct and from other relevant circumstances of the case. You must consider all that the accused said and did and also take into consideration other matters relevant to the issue, such as the number of wounds inflicted, the severity, the seriousness of the wounds, and the weapons used. There is a presumption that every person intends the natural and probable consequences of his actions".

The other points raised in the appeal relate to the evidence of the prosecution witnesses and in particular to the evidence of the main witness, Krishnan. One general submission is that the learned trial judge failed to give any or any adequate guidance to the jury as to the method of approach in assessment of the credibility of the witnesses and the many inconsistencies and contradictions of Krishnan. We know of no principle of law nor has our attention been drawn to any authority which suggests that it is the duty of a judge in his summing up to a jury to give them such guidance.

The Court of Criminal Appeal in England in *Stoddart's*[2] case in which the trial occupied twenty days

and there was an omission to direct the jury upon many of the complex issues which had been considered in the course of it, cited with approval Lord Esher's* words in *Abrath* v. *North Eastern Railway*[3] as follows: —

"It is no misdirection not to tell the jury everything that might have been told them: there is no misdirection unless the judge has told them something wrong, or unless what has been told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must shew that something wrong was said or that something was said which would make wrong that which was left to be understood".

The Court of Criminal Appeal then went on: —

"Every summing-up must be regarded in the light of the conduct of the trial and the questions which have been raised by the counsel for the prosecution and for the defence respectively. This court does not sit to consider whether this or that phrase was the best that might have been chosen, or that a direction which has been attacked might have been fuller or more conveniently expressed, or whether other topics which might have been dealt with on other occasions should be introduced. This court sits here to administer justice and to deal with valid objections to matters which may have led to a miscarriage of justice".

We agree with these observations and accordingly we find no substance in those of the appellants' grounds of appeal which allege failure on the part of the trial judge to direct the jury on the significance of the absence of any attempt to prove any motive on the part of the appellants or to direct the jury as to the effect of their arrest and detention on the credibility of some of the prosecution witnesses or to warn the jury that Krishnan's identification of the first appellant was unreliable and reflected on his credibility, or to direct the jury adequately on the issue of self-defence and the conduct of the identification parade.

Another ground of appeal alleges that the trial judge "failed to give adequate directions as to the defence and in particular as to the significance of the evidence of Mr. Choo Jim Eng — Consultant Surgeon of the Surgical Unit at Thomson Road Hospital — and that his evidence if accepted proved that the wounds on the first appellant could not have been caused in the manner indicated by the only witness implicating him". A great deal of time at the trial was taken up by the cross-examination of Dr. Patel based on the evidence of Mr. Choo Jim Eng, the defence expert medical witness, as well as by the examination-in-chief and cross-examination of Mr. Choo Jim Eng and we do not doubt that in their closing addresses both counsel for the prosecution and counsel for the first appellant drew the jury's attention fully to the evidence of these two medical witnesses and the points for and against the prosecution or the defence arising from their evidence. Having regard to all these factors and to the passages we have quoted from the judgment in *Stoddart's* case, *supra*, we would also reject this ground of appeal.

The last main ground of appeal is that the trial judge failed to direct the jury adequately on the question of common intention. Section 34 of the Penal Code is in the following terms: —

"When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone".

* Lord Esher was then Brett M.R.

The Privy Council in the Indian case of *Mahbub Shah* v. *King-Emperor*[4] construed section 34 of the Indian Penal Code, which is in identical terms with our section 34, as follows at page 153: —

"Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say 'the common intention of all', nor does it say 'an intention common to all'. Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of s. 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult, if not impossible, to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case".

At page 154 the Privy Council said:

"In their Lordships' view, the inference of common intention within the meaning of the term in section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case".

The trial judge in his summing up before dealing with the evidence, gave the jury the following directions on the ingredients of the offence of murder and of section 34 of the Penal Code: —

"Murder is committed if the act by which death is caused is done with one of the following intentions: firstly, with the intention of causing death; secondly, with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused; thirdly, with the intention of causing such bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

So the offence of murder may briefly be described as the unlawful killing of one human being by another human being with one of the three intentions to which I have referred.

Now, along with this charge of murder the charge says it should be read with section 34 of the Penal Code. Now then, Gentlemen, that section says: 'When a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if the act was done by him alone'. Now there are three requirements under this section. First, there must be a common intention among a group of people, that is the first requirement; second, there must be participation in the criminal act by those sharing the common intention; thirdly, the criminal act must be in furtherance of the common intention. Now if these three requirements are there, then every person who participates in the commission of that criminal act would be liable as if he committed the act all by himself, irrespective of the fact that he might have played only a very small part in the commission of the act".

He then went on to direct them that the phrase "common intention" implies that there is a pre-arranged plan and the existence of a common intention may be inferred from the circumstances disclosed in the evidence but this inference must not be drawn unless it is a necessary inference deducible from the circumstances of the case.

The trial judge, in our opinion, directed the jury on common intention in accordance with the law as laid down in *Mahbub Shah's* case, *supra*, and this being so it cannot be said that he failed to direct the jury adequately on the question of common intention.

We have earlier set out at some length the evidence before the jury and in our opinion there was ample evidence to justify the verdict of the jury that the appellants were guilty of murder under section 302 read with section 34 of the Penal Code. We would accordingly dismiss the appeals of both appellants.

Appeals dismissed.

Solicitors: *David Marshall; Ibrahim & Almenoar.*

Re will of P. M. FRAMROZ, DECD.; CHARTERED BANK (M) TRUSTEE LTD. v. S. F. FRAMROZ & ORS.

[O.C.J. (Wee Chong Jin C.J.) November 26, 1969]

[Singapore — Originating Summons No. 151 of 1969]

Wills — Construction of will — Intention of testator.

In this case the testator had devised a portion of the income from a private company of which he was the proprietor and beneficial owner to his nephew, R.P.G. with the proviso that "on the death of the said R.P.G. the share of the income which would be payable to him if he had been living shall be paid to the said S.F.F. or if she shall then be deceased to her two daughters." R.P.G. pre-deceased the testator but S.F.F. survived both the testator and R.P.G. The will contained a demise of the residue to the Singapore Association for the Blind. In this application the trustees of the will of the testator asked for the determination of the questions whether the estates of S.F.F. were entitled to the shares of the income under clause 3 (1) (b) proviso (iii) of the will or whether the same should be paid to the Singapore Association for the Blind.

Held: on the true construction of the will and having regard to the general scheme of the will and all the relevant circumstances, the two daughters do not take the share in the income on the death of their mother and the share should be paid to the Singapore Association for the Blind.

Case referred to:-

(1) *Perrin* v. *Morgan* [1943] A.C. 399.

ORIGINATING MOTION.

A. C. Ferguson for the plaintiffs (trustees)

Y. R. Jumabhoy for the daughters of Shirinbai Framroz Framroz.

P. Selvadurai for the Singapore Association for the Blind.

Isaac Paul Retnam (State Counsel) for the Attorney-General.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an application by the plaintiffs, the trustees of the Will of Phirozshaw Maneckji Framroz, deceased, for the determination of the following questions and for the following reliefs: —

1. Whether upon the true construction of clause 3 (I) (b) proviso (iii) of the will of Phirozshaw Maneckji Framroz deceased dated the 11th June, 1956, Sheroo Framroz Framroz and Diana D. Anklesaria formerly Diana Framroz Framroz, or the survivor or survivors of them in equal shares and proportions, are entitled to the share of the income which would be payable to Rustam Pestonji Gandhi notwithstanding that Shirinbai Framroz Framroz, the mother of the said Sheroo Framroz Framroz and Diana D. Anklesaria formerly Diana Framroz Framroz, did not pre-decease the said Rustam Pestonji Gandhi.
2. If the answer is in the negative whether the same shall be paid to the treasurer of the Singapore Association for the Blind described in the said will as the Singapore Institute for the Blind.

Having considered the numerous authorities to which my attention has been drawn during the argument, I think that it is only necessary to refer to one and to deal with it before examining the language of the deceased's will. That authority is *Perrin* v. *Morgan*[1] a case in which the House of Lords was concerned with the meaning of the word "moneys" as used in a will which directed that "all moneys of which I die shall be shared by my nephews and nieces now living".

Viscount Simon, L.C. at p.406 said: —

"My Lords, the fundamental rule in construing the language of a will is to put on the words used the meaning which, having regard to the terms of the will, the testator intended. The question is not, of course, what the testator meant to do when he made his will, but what the written words he uses mean in the particular case — what are the 'expressed intentions' of the testator".

Lord Atkin at p.414 said: —

"... the construing court has to ascertain what was meant, being guided by the other provisions of the will and the other relevant circumstances, including the age and education of the testator, his relations to the beneficiary chosen, whether of kinship or friendship, the provision for other beneficiaries, and other admissible circumstances. Weighing all these, the court must adopt what appears the most probable meaning. To decide on proven probabilities is not to guess but to adjudicate. If this is to decide according to the 'context', I am content, but I cannot agree that the court is precluded from looking outside the terms of the will. No will can be analysed *in vacuo*. There are material surroundings such as I have suggested in every case, and they have to be taken into account. The sole object is, of course, to ascertain from the will the testator's intentions'.

Lord Thankerton at p.416 said: —

"Their meaning is of course to be collected from the context, the place where, and the subject in regard to which, they are used; and the question is neither what the testator meant, apart from the words, nor what the words might mean, apart from intention, but what the testator meant by using them".

Lord Romer at p.420 said: —

"My Lords, I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. To understand the language employed the court is entitled, to use a familiar expression, to sit in the testator's armchair. When seated there, however, the court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said — that he was, in fact, one of those persons of whom Knight Bruce L.J. said that they spoke as if the office of language were to conceal their thoughts. In many of the cases to be found